

AMENDED IN SENATE AUGUST 15, 1996

AMENDED IN SENATE JULY 10, 1996

AMENDED IN ASSEMBLY MAY 2, 1995

AMENDED IN ASSEMBLY APRIL 26, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 328

**Introduced by Assembly Member Knowles
(Principal coauthor: Assembly Member Conroy)
(Coauthor: Assembly Member Johnson)**

February 9, 1995

An act to amend ~~Sections 1616 and~~, *repeal, and add Section 1620* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 328, as amended, Knowles. Insurance: surplus lines.

Existing law generally requires an insurer to be admitted in order to transact business in California, but permits insurance through nonadmitted insurers in various instances, including through a surplus line broker. ~~Existing law provides for the listing of eligible surplus line insurers by the Insurance Commissioner.~~

Existing law provides that before any nonadmitted foreign or alien insurer may file any pleading in any action, suit, or proceeding instituted against it, the insurer shall either procure a certificate of authority to transact insurance or give a bond in the action. However, this requirement does not

apply when the insurance is exempt from requirements regulating insurance by nonadmitted insurers, or when the insurer has lawfully transacted surplus line insurance, as specified, and the insurer has appointed an agent for the service of process. In that case the court is permitted to require the insurer to file a bond unless it makes a showing that it has sufficient assets.

This bill would provide that the restrictions as to filing suits by nonadmitted foreign or alien insurers do not apply to the above-mentioned categories of insurance and, in addition, those restrictions do not apply to insurance procured by the insured and insurance determined to be exempt by the Insurance Commissioner, but would require that the contract be governed by and in compliance with the laws of the state in which the contract was issued. The bill would provide, in addition, that an insurer need not file a bond if at the time the insurer files any pleading in any action, suit, or proceeding instituted against it, the insurer is an eligible surplus line insurer, as specified, or with respect to a dispute arising out of certain contracts of reinsurance, the reinsurer has complied with specified requirements. These changes would remain in effect until January 1, 2000, when they would be repealed.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1620 of the Insurance Code is
2 amended to read:
3 1620. (a) The provisions of the preceding sections of
4 this article shall not apply to any action, suit or proceeding
5 against any unauthorized foreign or alien insurer arising
6 out of any contract of insurance effected in accordance
7 with ~~Sections 1760.5 or 1763~~ Section 1760, 1760.5, 1763, or
8 1763.1, or, if the contract is governed by and complies
9 with the laws of the state in which the contract was
10 entered, ~~and if~~. The provisions of Section 1610 shall apply
11 to any action, suit, or proceeding under this section unless
12 the insurer has designated an agent in California for
13 service of process or the contract contains a provision



1 designating a resident of this state or any firm of which
2 one member is a resident of this state to be its true and
3 lawful attorney upon whom may be served all lawful
4 process in any such action, suit or proceeding.

5 (b) In any such action, suit or proceeding arising out
6 of any such contract of insurance, the court may require
7 the insurer to file a bond, in an amount sufficient to secure
8 the payment of any final judgment which may be
9 rendered unless one or more of the following is
10 applicable:

11 (1) The insurer makes a showing satisfactory to the
12 court that it maintains in a state of the United States funds
13 or securities in trust or otherwise, sufficient and available
14 to satisfy any such final judgment and that it will pay the
15 judgment without requiring suit to be brought thereon in
16 the state where the securities or funds are located.

17 (2) At the time the insurer files any pleading in any
18 action, suit, or proceeding instituted against it, the insurer
19 is listed as an eligible surplus line insurer in accordance
20 with subdivision (f) of Section 1765.1, unless ~~the~~
21 ~~presumption created by that subdivision that the~~
22 ~~nonadmitted foreign or alien insurer is an eligible surplus~~
23 ~~lines insurer is rebutted~~ by facts presented to the court
24 ~~that create~~ *there is created* a reasonable doubt as to the
25 present ability of the insurer to satisfy any final judgment
26 in the action, suit, or proceeding. *Upon request of a party*
27 *or the court, the unauthorized foreign or alien insurer or*
28 *reinsurer shall provide the court and the party requesting*
29 *the bond with copies of documents relating to the*
30 *financial condition of the insurer, including, but not*
31 *limited to, copies of the insurer's most recent annual*
32 *statement and audited financial report and, where*
33 *applicable, a certified copy of the trust agreement*
34 *required by subdivision (b) of Section 1765.1 and a*
35 *verified copy of the most recent quarterly statement or*
36 *list of assets in the trust.*

37 (3) With respect to a contract of reinsurance issued in
38 accordance with Section 1760.5, the reinsurer has
39 complied with the provisions of this code necessary to
40 permit the ceding insurer to take credit on its financial

1 statement for the reinsurance as set forth in Section 922.4
2 or 922.5.

3 (c) The provisions of this section, as amended at the
4 1996 portion of the 1995–96 Regular Session shall not apply
5 to any action, suit, or proceeding in which a court has
6 already required a bond prior to the effective date of the
7 amendments.

8 (d) This section shall remain in effect only until
9 January 1, 2000, and as of that date is repealed, unless a
10 later enacted statute, that is enacted before January 1,
11 2000, deletes or extends that date.

12 SEC. 2. Section 1620 is added to the Insurance Code,
13 to read:

14 1620. (a) The provisions of the preceding sections of
15 this article shall not apply to any action, suit, or
16 proceeding against any unauthorized foreign or alien
17 insurer arising out of any contract of insurance effected
18 in accordance with Sections 1760.5 and 1763 where such
19 contract contains a provision designating a resident of this
20 state or any firm of which one member is a resident of this
21 state to be its true and lawful attorney upon whom may
22 be served all lawful process in any such action, suit, or
23 proceeding.

24 (b) In any such action, suit, or proceeding arising out
25 of any such contract of insurance, the court may require
26 the insurer to file a bond, in an amount sufficient to secure
27 the payment of any final judgment which may be
28 rendered unless the insurer makes a showing satisfactory
29 to the court that it maintains in a state of the United States
30 funds or securities in trust or otherwise, sufficient and
31 available to satisfy any such final judgment and that it will
32 pay the judgment without requiring suit to be brought
33 thereon in the state where the securities or funds are
34 located.

35 (c) This section shall become operative on January 1,
36 2000.

